

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

CR-10-0074

-against-

:

United States Courthouse
Central Islip, New York

HERBERTO MARTINEZ, LUIZ RUIZ,
FRANKLIN VILLATORO, YANES
ACOSTA-YANES and CARLOS ORTEGA,

Defendants.

:

January 17, 2013
X 12:30 p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: LORETTA E. LYNCH
United States Attorney
100 Federal Plaza
Central Islip, New York 11722
BY: JOHN DRUHAM, ESQ.
RAYMOND TIERNEY, ESQ.
CARRIE CAPWELL, ESQ.
Assistant United States Attorney

For the Defendants: ELIZABETH MACEDONIO, ESQ.
ARNOLD LEVINE, ESQ.
For Mr. Martinez

ANDREW MUCCIGROSSO, ESQ.
For Mr. Villatoro

STEVE ZISSOU, ESQ.
MICHAEL BACHRACH, ESQ.
For Mr. Ruiz

For the Defendants:

LLOYD NADEL, ESQ.
For Mr. Acosta-Yanes

IRA LONDON, ESQ.
MARIANNE RANTALA, ESQ.
For Mr. Ortega

JOSEPH KILADA, ESQ.
For Mr. Valle

Court Reporter:

Mary Ann Steiger
100 Federal Plaza
Central Islip, New York 11722
(631) 712-6101

Proceedings recorded by mechanical stenography.
Transcript produced by computer.

1 THE CLERK: Calling criminal case 10-0074,
2 U.S.A. versus Heriberto Martinez, Luiz Ruiz, Franklin
3 Villatoro, Yanes Acosta-Yanes and Carlos Ortega.

4 Will counsel note their appearances for the
5 record.

6 MR. DURHAM: John Durham, Raymond Tierney and
7 Carrie Capwell for the United States.

8 Good morning, your Honor.

9 THE COURT: Good afternoon.

10 MR. DURHAM: Good afternoon.

11 MS. MACEDONIO: Good afternoon, your Honor.

12 Elizabeth Macedonio and Arnold Levine for
13 Mr. Martinez.

14 THE COURT: Good afternoon.

15 MS. RANTALA: Good afternoon.

16 Marianne Rantala for Carlos Ortega along with
17 Ira London.

18 THE COURT: Good afternoon.

19 MR. BACHRACH: Good afternoon, your Honor.

20 Michael Bachrach and Steve Zissou on behalf of
21 Mr. Ruiz.

22 MR. MUCCIGROSS: Andrew Muccigrosso appearing for
23 Sanford Talkin who is counsel for Mr. Villatoro.

24 THE COURT: Good afternoon.

25 MR. KILADA: Appearing for Mr. Valle, Joseph

1 Kilada.

2 Good afternoon, your Honor.

3 MR. NADEL: For Mr. Acosta-Yanes, Lloyd Nadel.

4 Good afternoon.

5 THE COURT: Good afternoon.

6 We have the Spanish interpreter who is on staff
7 here interpreting for a number of the defendants. I'll
8 ask that she identify herself and state which defendant
9 she's interpreting for.

10 THE INTERPRETER: Maya Gray, Certified Spanish
11 Federal Court Interpreter, interpreting for
12 Mr. Acosta-Yanes, Heriberto Martinez, and Carlos Ortega.

13 THE COURT: We have the second Spanish
14 interpreter here who I'll give the affirmation to and ask
15 him to please state his name.

16 THE INTERPRETER: J. Carlos Venant.

17 THE COURT: As you know this was on initially
18 for argument with respect to Mr. Heriberto Martinez and
19 Mr. Ortega with respect to various motions that were being
20 made.

21 A number of the group five defendants indicated
22 they wanted to participate in connection with the
23 questionnaire issue as well as the motion to preclude the
24 government's expert, and I invited any group five
25 defendant, or any defendants in the case for that matter,

1 to participate if they wished to. And I think in terms of
2 the other group we're missing one defendant who is not
3 participating.

5

4 MR. DURHAM: That's correct, your Honor.

5 His attorney, Mr. Kilada, is here. Mr. Kilada
6 called me yesterday afternoon, but it was too late in the
7 day to have Mr. Valle produced. Mr. Kilada is here to
8 represent his interests.

9 The remaining group five defendants are all
10 present in addition to the January trial group of the
11 remaining three defendants as well as Mr. Ortega who was
12 indicted separately and then joined for trial.

13 THE COURT: Mr. Kilada, you want to proceed even
14 though your client is not present today?

15 MR. KILADA: Yes, sir.

16 THE COURT: I want to make clear, with respect
17 to that, that if you want to make argument in connection
18 with this, I think we should postpone it for another date
19 for you to do so. I'm concerned about you raising things
20 that your client is not present for. Obviously you can
21 participate in the conference, but you can also have him
22 come in on another day as well, okay?

23 MR. KILADA: Thank you, your Honor.

24 THE COURT: Also, there was back and forth in
25 the letters about the issue of the expert and whether or

1 not group five should participate with respect to the
2 motion regarding the expert because the government hasn't
3 decided whether or not to call the expert.

4 I want to say two things with respect to that.
5 The first is that I agree with the defense to the extent,
6 even though the government hasn't decided that, I'm more
7 than happy to have participation by anyone on these issues
8 given that some issues are common to all the groups, but I
9 will say and I understand why, Mr. Zissou, the concern was
10 about potentially law of the case, but I don't view any of
11 this as law of the case for each particular group. Every
12 group obviously is different, that's why they're in
13 different groups.

14 So to the extent I made a ruling with respect to
15 a particular group, I would not view that as law of the
16 case with respect to other groups. I'm prepared to look
17 at the issues de novo with respect to each group.

18 So although I will allow full participation in
19 the argument, I don't want there to be any concern or
20 confusion that necessarily whatever the Court rules with
21 respect to Mr. Martinez and Mr. Ortega will necessarily
22 apply when the trial comes up for group five.

23 In terms of the order, my intention was to go
24 forward first with the argument with respect to the
25 questionnaire and the expert since that I think is why the

1 group five lawyers are here, and then proceed to the
2 motions that are related to Mr. Martinez and Mr. Ortega.

3 Is everybody in agreement with that?

4 MR. DURHAM: We agree, your Honor.

5 THE COURT: Given that it's 12:30, I think what
6 we will do is handle those two motions, break for lunch,
7 and then the lawyers who aren't going to participate in
8 the other issues can go home.

9 Does everybody agree with that?

10 MR. ZISSOU: Yes, your Honor.

11 MS. MACEDONIO: I had filed a motion for
12 severance of counts. The government responded last night
13 to that.

14 I haven't had the opportunity, because I've been
15 here all morning, to download that and print it, so
16 perhaps we can argue that particular motion at another
17 time.

18 THE COURT: The response is not long. During
19 the lunch break I'll ask Mr. Durham to give it to you. I
20 would like to discuss that.

21 MS. MACEDONIO: Mr. Durham is giving it to me
22 now.

23 THE COURT: You can read it during the lunch
24 break and if possible I would like to discuss that today,
25 so let me know if you're prepared to do that.

1 MS. MACEDONIO: Thank you, Judge.

2 THE COURT: So let's start with the
3 questionnaire issue and I read the papers and reviewed the
4 questionnaire.

5 I've again given considerable thought to this
6 issue and anyone who wants to highlight anything from
7 their papers, I'll give them a chance to do that now.

8 Anyone from the defense?

9 MR. ZISSOU: Judge, it is our view that for this
10 issue that I would address it, but that's not to suggest
11 that others should not.

12 It is quite clear that we simply cannot fairly
13 select a jury and uncover any hidden bias that they have
14 with an anonymous panel in the absence of a questionnaire.

15 And while we're not wedded to the particular
16 questionnaire that we submitted to the Court, we do
17 believe an extensive questionnaire is required.

18 We're more than happy to sit down with counsel
19 for the government to work out a questionnaire that is
20 satisfactory to both sides.

21 Indeed we have broached the topic a number of
22 times, but as I think we expressed clearly in our papers
23 that we believe that it's absolutely imperative.

24 Indeed I think looking over the last 10 years or
25 more of practice just in the Eastern District it has

1 become, let's say, a de facto presumption that in a case
2 of an anonymous jury, judges in the Eastern District of
3 New York routinely use a questionnaire.

4 The list that we gave you, while it includes
5 some cases from the Southern District of New York, those
6 cases in the Eastern District some were capital trials,
7 but others were not.

8 Persico, for example, was not a capital case,
9 Gioli was not a capital trial, and although there were
10 some of our own in fact where the government was actually
11 seeking death as a penalty, many of those were not.

12 So we think, given the nature of the charges in
13 this case and your Honor's having granted an anonymous and
14 partially sequestered voir dire and in order to balance
15 all of the factors that apply in this case, your Honor
16 should allow us to at least in the threshold matter have a
17 questionnaire which details the background.

18 THE COURT: Thank you.

19 Anybody else want to add to that from the
20 defense side?

21 The government.

22 MS. CAPWELL: Your Honor, I'll address this
23 issue for the government.

24 The government's position is that a juror
25 questionnaire is not necessary here, it's not required by

1 the Second Circuit even in cases where an anonymous jury
2 has been impaneled.

3 The defendants' right to an impartial jury will
4 be protected through thoroughly and probing voir dire by
5 your Honor and the defense can suggest questions to your
6 Honor that they want asked in order to probe into
7 different areas, including many of the questions that they
8 included in their questionnaire.

9 I cited the case of United States versus Tamaro
10 in our papers. That was a Southern District of New York
11 case. It was an organized crime case.

12 There was an anonymous jury impaneled and it was
13 partially sequestered as well, and there Judge Kaplan
14 found that he denied the defendant's request for
15 questionnaires as unnecessary and basically said that the
16 defense can suggest questions for voir dire which he would
17 be willing to ask, that the jurors could still be
18 questioned as to their occupations and other issues
19 without revealing their identities, but still allowing the
20 parties to learn about the jurors and to probe into any
21 possible biases they might have.

22 Judge Kaplan further found that the defense
23 would not have any problem assessing juror bias through
24 the oral voir dire that he would conduct and the same
25 would hold true in this case, your Honor.

1 A thorough oral voir dire would be more than
2 sufficient here to explore possible biases by the jurors.

3 And the jurors, although they're anonymous,
4 really the only pieces of information which we would not
5 learn would simply be their names, the town they reside
6 in. We would ask it be limited to just the county where
7 they reside and not specify who their employer is. They
8 could still speak about what they do for a living and they
9 could answer all of the other questions which your Honor
10 asks through standard voir dire and any other question
11 that the defense and government might think that are
12 reasonable to ask in this case.

13 The fact that they're not having to reveal their
14 names and identities would actually, our position would
15 be, allow them to be more honest with the Court about any
16 possible biases they might have during oral voir dire.

17 And to the extent that they might have some kind
18 of fear, this notion of fear because of being an anonymous
19 jury, as we noted in our papers, if a juror truly and
20 honestly has a fear of serving on a jury, that is
21 something that they would bring to the Court's attention
22 during voir dire in order to be removed from the jury.

23 For those reasons, your Honor, and the other
24 reasons that were in our papers, the government's position
25 is that a questionnaire is not required in this case.

1 The Second Circuit has made clear that it's not
2 required or mandatory even in cases involving an anonymous
3 jury.

4 MR. ZISSOU: It seems Judge Kaplan is both sides
5 favorite judge today.

6 And after that, in United States against Gialani
7 Judge Kaplan, despite his inclination otherwise, decided
8 to use a questionnaire and we did.

9 Just to give a little background to that, we had
10 1200 questionnaires delivered to us on a Friday or a
11 Thursday. We went through them the entire weekend and by
12 Monday afternoon we had a jury selected from that group
13 after the first three or 400 jurors came through the well.

14 It is a time saving process, and one that I
15 think insures fairness.

16 One of the cases that Mr. Levine was kind enough
17 to remind me of is Skilling against the United States.
18 It's not in our papers. It's 130 Supreme Court 2896.

19 There the Supreme Court, in rejecting the
20 challenge from Skilling's counsel, pointed out the
21 extensive questionnaire that the Court used to uncover
22 bias followed by oral voir dire to insure and reject the
23 challenge that Skilling was unable to select a fair panel
24 from the veneer in Texas at the time.

25 And so, again, we urge the Court to grant our

1 application.

2 THE COURT: Okay. I am going to utilize a jury
3 questionnaire in this case. I agree with the government
4 that it's not required. There's no question that even
5 with an anonymous jury that a fair and impartial jury can
6 be impaneled through a thorough oral voir dire.

7 However, I do agree with the defense that in
8 this case, in this particular case, the fact that we're
9 having an anonymous jury combined by the publicity
10 associated with some of the crimes in the indictment and
11 the nature of the crimes that are in the indictment, I
12 think as a matter of discretion I'll use the
13 questionnaire.

14 And my hope is, as Mr. Zissou indicated, is that
15 it will be more efficient. If we do it in the manner that
16 he suggests, it will save time.

17 So I think that efficiency is an additional
18 reason, but I also believe that given the other reasons
19 that I noted in terms of an anonymous jury, publicity and
20 the nature of some of the murders, that it will alleviate
21 concerns that the voir dire was not thorough enough.

22 And the questionnaire, I have some issues that I
23 want to get to. I think the questionnaire is too long.
24 It's too many questions. So I do want the government and
25 defense counsel to try to shorten it.

1 The government raised an objection to certain
2 questions which seem to be reasonable objections to me so
3 I want both sides to sit down to see if they can address
4 those objections and shorten it significantly.

5 In connection with that, I would ask the
6 government, I did look at the Tarantino questionnaire that
7 Judge Seybert used -- I think it was last year -- which
8 was significantly shorter. It wasn't an MS-13 case, but a
9 lot of the questions are similar.

10 So it might be helpful if you could post that on
11 ECF here so defense counsel can look at that one and sort
12 of use that as a base.

13 MS. CAPWELL: There were two trials, a trial and
14 a retrial. Do you know if it was the 2011 version or the
15 2010 version. I can always check which one was shorter.

16 THE COURT: The version I have doesn't have a
17 date on it, so I can't tell you. It was 64 questions. I
18 see a date on the question. April 3rd, 2012.

19 That might be helpful to incorporate some of the
20 more case specific questions. I think that was more along
21 the length that I thought would be necessary in this case.

22 So we should set a date for a new version to
23 come in some time next week. Again, the group five
24 lawyers are here but this is something I'm doing for group
25 three. If it doesn't work well, I'll reassess whether or

1 not it makes sense to do it for group five. Hopefully it
2 will work well and I'll do it again for group five.

3 MS. MACEDONIO: Judge, I drafted the
4 questionnaire. I'll be happy to work with Ms. Capwell to
5 shorten it.

6 THE COURT: Great. If you could e-mail to
7 chambers your version and maybe the Tarantino version so
8 to the extent there is disagreement, I'm hoping there will
9 be agreement, to the extent there is disagreement, my
10 staff can type the questionnaires and cut and paste.

11 MS. MACEDONIO: I think we could send it to
12 chambers in a form that could be manipulated in the red
13 line format so you know what questions are objected to.

14 THE COURT: Okay. Let's set a date for that for
15 group three. If the group five lawyers want to chime in
16 on that, fine. The focus should be dealing with defense
17 counsel for group three, so maybe by the end of the day on
18 Tuesday.

19 MS. MACEDONIO: That's fine, your Honor.

20 THE COURT: Anything else related to the jury
21 selection before we leave that issue? I think there would
22 be a timing issue.

23 MR. DURHAM: That's what I was going to suggest,
24 that the Court's ruling will require some adjustment to
25 the current trial schedule.

1 As it stands now, we're supposed to do jury
2 selection on January 28 with trial beginning the following
3 Monday, which is February 4th.

4 I talked to Ms. Macedonia about this before and
5 we discussed how we saw the process playing out in the
6 event that your Honor granted the motion.

7 Our thought was, and I think I'm speaking for
8 both parties, is that the jurors would come in on Monday,
9 January 28, they would complete the jury questionnaire and
10 that evening we would send those for copying.

11 It's defense counsel's motion, so the defense
12 will arrange for those to be copied. They will provide a
13 set to the Court, a set to the government, a set for each
14 defense counsel and then we would take a couple of days to
15 review those questionnaires and again the oral voir dire
16 on Monday, February 4th, and we would start trial
17 immediately following the selection of the jury or we
18 could, as we have it now, schedule it for a date certain
19 on February 11th.

20 I don't want to delay this any more than
21 necessary. However, given it's difficult to predict how
22 long jury selection will take, we have some witnesses who
23 will be traveling from out of town.

24 We would ask the Court to rule today in terms of
25 when you would like to begin the evidence so we can make

1 the necessary arrangements.

2 THE COURT: What's your estimate? Now we have
3 two defendants rather than three. Does that change your
4 estimate of the length of the trial?

5 MR. DURHAM: I think it would be marginally
6 short. It didn't result in the subtraction of any counts.
7 All the same murders still have to be proven. I would
8 still estimate in the neighborhood of five to six weeks.

9 THE COURT: I don't think, once we call back the
10 jurors, that it's necessarily going to take more than a
11 day or two. You can correct me if I'm wrong.

12 MR. DURHAM: My questionnaire experience is it
13 took a full week, notwithstanding the questionnaires. It
14 took five days to select a jury.

15 MS. MACEDONIO: Putting aside the last comment,
16 my experience as well has been it takes a week for the
17 parties to go through the questionnaires.

18 THE COURT: That part I understand. After that
19 process is completed about how many days do you think for
20 actual selection, one to two days or do you think it will
21 be longer?

22 MS. MACEDONIO: I would think it would be
23 shorter. That's the whole purpose in this. It depends on
24 the way jurors are answering particular questions that are
25 raised. The government is looking for a date certain.

1 THE COURT: So you're okay starting with the
2 opening statements on February 11?

3 MS. MACEDONIO: With respect to Mr. Martinez,
4 yes.

5 THE COURT: How about Mr. Ortega?

6 MS. RANTALA: That would be fine, your Honor.

7 THE COURT: That's what we will do.

8 My understanding from the jury department is
9 that on the 28th they would come in and fill out the
10 questionnaire. That could be done in the ceremony
11 courtroom or in the jury assembly room. I assume
12 everybody agrees on that.

13 MS. RANTALA: That's fine, your Honor.

14 MR. DURHAM: Yes, your Honor.

15 MS. MACEDONIO: Yes, your Honor.

16 THE COURT: The questionnaire will be issued to
17 the panel on January 28th. We will meet during that week
18 to go over any disagreement over who should be excused and
19 we will call the remaining jurors back in on the 4th and
20 take whatever days that week that are necessary to go
21 through any questions and the selection with respect to
22 them and then have opening statements beginning at 9:30 on
23 February 11th.

24 MR. DURHAM: Your Honor, maybe -- Friday is
25 February 1. Would it make sense to have a status

19

1 conference on that Friday? At that point the parties will
2 have reviewed all of the questionnaires we have. We may
3 have a list of jurors that we could excuse for cause
4 without bringing them in.

5 MS. MACEDONIO: May I have a moment, Judge?

6 THE COURT: I would prefer to do it the day
7 before if you thought it would be ready by the 31st.

8 (Pause in proceedings.)

9 MS. MACEDONIO: Judge, what we're contemplating
10 hopefully is we won't need a status conference, we will
11 agree on the challenges for cause, and for those folks who
12 shouldn't come back to the extent we will need a status
13 conference I would prefer we do it Thursday.

14 THE COURT: We will meet next week, so let's
15 leave that for then and we can set the date then.

16 Let's move to the MS-13 expert. I have reviewed
17 the papers on that. I went back and looked at the Second
18 Circuit's opinion in United States versus Mejia.

19 I did have some questions for the government, so
20 let me hear from any defense counsel if you want to add
21 anything on that.

22 MR. BACHRACH: I think this issue is probably a
23 little less controversial than the last one, to the extent
24 the government has conceded to a hearing at this point.

25 And so our question would be how to proceed with

20

1 the hearing since there are several issues that are
2 involved.

3 There is, first, whether or not the expert
4 actually has the requisite expertise in the specific six
5 areas that the government wishes him to testify to.

6 And then once passing that threshold, to what
7 extent will his testimony be limited, marshaled, or
8 whether or not your Honor wants to get into that point,
9 the second question, the marshalling, with respect to both
10 Mejia, but also with respect to Mejia as well which
11 cautions against bolstering an aider's testimony or having
12 an expert witness testify to something that a lay jury
13 would understand.

14 And that, I guess, is more of us asking your
15 Honor's guidance. I believe the government has consented
16 to the hearing.

17 THE COURT: Anyone else want to add to that from
18 the defense standpoint?

19 I agree there are two issues. One is a hearing
20 with respect to this particular expert's qualifications
21 with respect to New York as opposed to Maryland, but I do
22 want to ask the government some threshold questions
23 because these wouldn't be dependent upon this particular
24 expert, but based upon the Second Circuit's Mejia
25 decision.

1 And I understand the government, in terms of
2 what it's proposing this expert would do, is more limited
3 than what the expert did in Mejia.

4 But two of the issues that the Court has to
5 consider that defense counsel pointed out is, one, whether
6 or not the testimony is beyond the lay person's
7 understanding. That's the first issue.

8 For some of this proposed testimony it's not
9 self-evident to me that a jury would have difficulty
10 understanding some of these concepts.

11 But in connection with that and this also then
12 goes into a Rule 403 balancing and it depends on the case.

13 If in fact there's going to be numerous
14 cooperating witnesses which I believe based upon various
15 motions I have seen, I want the government to explain to
16 me what this expert adds to that proposed testimony that
17 the cooperating witnesses could not do themselves to avoid
18 the bolstering that defense counsel alluded to.

19 I want the government to explain to me what he
20 would be testifying to that the cooperators would be
21 unable to testify to.

22 MR. TIERNEY: Your Honor, the expert would
23 establish the larger criminal organization that is the
24 MS-13 as well as its national and international reach
25 which perhaps the individual cooperators aren't able to

1 do.

2 THE COURT: First of all, I'm not sure how
3 probative that is in the case. I'm not sure, if the
4 cooperators aren't able to discuss the international
5 reach, I'm not sure how probative it is to this particular
6 case in terms of the crimes that are charged and the
7 enterprise that's charged. So that's one issue.

8 Some of the things that I think that you're
9 proposing that the expert cover would be the rules of the
10 gang, terminology of the gang, symbols, tattoos of the
11 gang. Isn't that also correct?

12 MR. TIERNEY: Yes.

13 THE COURT: I think cooperating witnesses
14 obviously are usually in a position to talk about what the
15 rules are of the gang are, the symbols of the gang, the
16 terminology of the gang. That's why it's a case specific
17 thing.

18 Obviously I'm fully aware that notwithstanding
19 Mejia that experts in these types of cases are often
20 utilized and for good reason but it depends on the
21 particular case.

22 Sometimes you may have a case where it's a lot
23 of wiretapping and you don't have a lot of cooperating
24 witnesses and therefore a lay person may not have any
25 context for understanding some wiretap evidence.

1 But in a case where you will have multiple
2 cooperating witnesses, I'm not sure how much an expert
3 would add.

4 If it's just trying to establish that the gang
5 originated in El Salvador in whatever time period, I'm not
6 sure how much that adds to the government's proof.

7 MR. TIERNEY: Your Honor, I will say with regard
8 to when the government fashioned its response they looked
9 at it in terms of the Crawford issue in establishing the
10 expert's expertise and at a threshold level that would
11 have to be established. That's why we consented to the
12 hearing.

13 And with regard -- and one of the reasons why we
14 consented to the hearing, we didn't want a situation where
15 there are constantly objections with regard to every
16 question that's asked. So with regard to the specifics of
17 the testimony, that's why we consented to the hearing and
18 we were prepared to make an argument with regard to the
19 relevance after the Court heard the evidence for itself.

20 THE COURT: Okay. Again, I don't want to go
21 through a useless exercise of a hearing. I'm telling you,
22 unless you can articulate how the expert testimony would
23 be different than what the cooperators would testify, I
24 think, especially in light of Mejia, this is a matter of
25 discretion, not something that is necessary in this case.

1 I don't want to go through a hearing about his
2 expertise in Maryland versus New York if the more
3 fundamental question is what is he going to add to the
4 case that the cooperators are not going to cover or that a
5 jury can't understand on their own.

6 One thing I was thinking was in the Mejia case
7 was there a retrial after that?

8 MR. TIERNEY: Yes, your Honor.

9 THE COURT: Was there an expert at the retrial?

10 MR. TIERNEY: There was. It was a different
11 expert.

12 THE COURT: It might be helpful for me to see
13 that expert's testimony and/or the expert from Maryland
14 you say testified in other cases.

15 MR. TIERNEY: He did.

16 THE COURT: If you want to provide a transcript
17 of some other case where he's testified, then I can see
18 what the scope is. It would be helpful if you tell me if
19 I look at such transcript something that he said in
20 connection with the background of the gang that the
21 cooperators aren't able to cover and I can assess whether
22 I agree with that and how probative that is in light of
23 the other issues.

24 MR. TIERNEY: We can provide you with that
25 information and we can supplement our response.

1 THE COURT: If you think it would be better to
2 have him explain that in a hearing, I'm prepared to do
3 that.

4 Given what my issues are, I'm not sure a hearing
5 would add or subtract as long as you can provide me with
6 similar testimony by him or another expert.

7 MR. TIERNEY: Yes, your Honor.

8 THE COURT: I want you to address what areas the
9 cooperation would not cover.

10 Does defense counsel want to add anything on
11 that?

12 MR. BACHRACH: No, your Honor.

13 THE COURT: It's 1:00. Let's break for lunch
14 and then deal with the suppression hearing.

15 Do any of the group five counsel have any issues
16 before they depart?

17 MR. ZISSOU: No, your Honor. Thank you.

18 MS. MACEDONIO: So we're clear, other than the
19 hearing this afternoon, we're dealing with my severance
20 point and Ms. Rantala's motions that she filed?

21 THE COURT: Yes.

22 I would say, Mr. Kilada, what I want you to do,
23 I'll authorize this pursuant to CJA, I want you to get a
24 copy of the transcript quickly and provide it to your
25 client because next time I do see him I'll ask whether or

1 not he's had a chance to review it and if there's any
2 issues he wants you to address in light of what transpired
3 with respect to the other defendants.

4 I haven't made any decision regarding group
5 five, which is why I made this optional. It's a group
6 three proceeding where group five could participate. I
7 don't want him to feel that he's missing anything.

8 MR. KILADA: Yes. It's my intention to leave
9 here after we break. I'm going to report to Mr. Valle in
10 person and relate the event. I will do that by way of
11 transcript as well.

12 Secondly, your Honor, just to facilitate,
13 Mr. Valle is being housed in a different facility from one
14 of his codefendants, Luiz Ruiz. Mr. Ruiz and Mr. Valle
15 are wedded in the serious counts affecting the two of
16 them.

17 I make respectful application of your Honor to
18 perhaps consider scheduling not so much a status next
19 week, but a date for Mr. Valle and Mr. Ruiz perhaps next
20 Tuesday so they can confer in person and we can further
21 discuss plea negotiations and our roadmap in the case.

22 MR. DURHAM: If I can offer a suggestion, the
23 group five defendants are on for status conference and
24 oral argument next Friday anyway. Mr. Ruiz is at MDC, so
25 the marshals don't do MDC pick up normally other than

1 Wednesday and Friday, so both Mr. Valle and Mr. Ruiz will
2 be in the building next Friday.

3 THE COURT: Is that sufficient or do you want to
4 do something earlier than that?

5 MR. KILADA: That's fine, your Honor. We're
6 scheduled for 1:30 on Friday. I think we can certainly
7 make that work.

8 THE COURT: That will give you time to get the
9 transcript. I want you to get the transcript.

10 MR. KILADA: I will order it today, your Honor.

11 THE COURT: Thank you.

12 So I'll see counsel for Mr. Ortega and
13 Mr. Martinez at 2:00 and if any of the group five lawyers
14 want to stay, I'm happy to have you stay.

15 MR. LONDON: Can we make that 2:15?

16 THE COURT: Yes, that's fine.

17 (Proceedings in this matter are recessed.)

18

19

20

21

22

23

24

25